

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
RADFORD ARMY AMMUNITION PLANT
AND
ALLIANT AMMUNITION AND POWDER COMPANY, LLC
(VPDES Permit No. VA0000248)**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) by the State Water Control Board to the Radford Army Ammunition Plant and Alliant Ammunition and Powder Company, LLC for the Radford Army Ammunition Plant for the purpose of resolving certain alleged violations of State Water Control Law and the Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
7. “Permit” means VPDES Permit No. VA0000248, which was reissued to Respondents on April 28, 2000 to authorize discharges from RAAP wastewater treatment facilities.
8. “RAAP” means the Radford Army Ammunition Plant, a manufacturing facility near Radford, Virginia owned by the United States Army and operated by Alliant Ammunition and Powder Company, LLC.
9. “Regulations” means the Permit Regulation, 9 VAC 25-31-10 *et seq.*

10. "Respondents" means the Radford Army Ammunition Plant and Alliant Ammunition and Powder Company, LLC.

SECTION C: Department's Findings of Fact and Conclusions of Law

1. On April 28, 2000, the Department reissued VPDES Permit No. VA0000248 to Respondents. Since that time, the quantity and variety of nitrocellulose products produced at RAAP has significantly increased.
2. On May 10, 2002, the Department issued Notice of Violation ("NOV") No. W2002-05-0005 alleging that Respondents violated effluent limits for both average and maximum BOD₅, sulfates maximum loading, and pH minimum during March 2002.
3. On August 9, 2002, as amended August 13, 2002, the Department issued NOV No. W2002-08-W-0004 alleging that the Respondents violated effluent limits for TSS maximum concentration in May 2002, acute toxicity in May 2002, pH minimum in April 2002, and sulfates maximum loading in April 2002. The alleged violation of effluent limits for TSS maximum concentration constitutes a permitted excursion due to the occurrence of a 10-year storm event.
4. Although Respondents' staff initially believed that a leaking pump caused the BOD₅ violations, subsequent investigations revealed that BOD₅ generation rates rose because of a combination of overall production increases and recent increases in numbers of startups and shutdowns of various production lines. These changes were caused by increases in small orders for a variety of different nitrocellulose products. Respondents expect this higher rate of generation of BOD₅ to continue indefinitely.
5. In letters to the Department dated March 5, April 5, April 9, and May 16, 2002, Respondents explained the circumstances that led to the sulfate, pH and TSS violations. Respondents have corrected the problems that led to those violations. These violations are not expected to recur and do not appear to have caused any significant impact.

SECTION D: Agreement and Order

Accordingly, the State Water Control Board, by virtue of the authority granted it in §62.1-44.15(8a), orders Respondents, and Respondents agree, to perform the actions described in Appendix A of this Order. Moreover, from May 2002 through the date the Department issues a modification to the BOD₅ and TSS effluent limits in the Permit, it is mutually agreed that for discharges from Outfall 007: 1) the interim VPDES monthly average effluent loading limit for BOD₅ shall be 276 kg/d and the daily maximum effluent loading limit for BOD₅ shall be 735 kg/d; 2) the interim VPDES monthly average effluent loading for TSS shall be 460 kg/d and the daily maximum effluent loading for TSS shall be 1494 kg/d; and 3) Respondents shall comply with all other effluent limitations as specified in the Permit.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Respondents, for good cause shown by Respondents, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those addressed in NOV No. W2002-05-W-0005 and NOV No. W2002-08-W-0004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Respondents admit the jurisdictional allegations contained herein. Respondents neither admit nor deny any allegation of fact or law set forth in this Consent Order.
4. Respondents declare that they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by Respondents to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Respondents shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Respondents shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Respondents shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. It is the expectation of the Parties to this Order that all obligations of Radford Army Ammunition Plant will be fully funded. Radford Army Ammunition Plant agrees to seek sufficient funding to fulfill its obligations under this Order. No provisions herein shall be interpreted to require obligation or payment of funds in violation of the Anti-deficiency Act, 31 U.S.C. Sec. 1341. In cases where payment of obligations of funds would constitute a violation of the Anti-deficiency Act, Respondents shall request an amendment to this Order that appropriately adjusts the dates established requiring the payment or obligations of such funds shall be appropriately adjusted.
10. This Order shall become effective upon execution by both the Director or his designee and Respondents. Notwithstanding the foregoing, Respondents agree to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until either: a) Respondents petition the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of this order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Respondents. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Respondents from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By their signature below, Respondents voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The Radford Army Ammunition Plant voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002,

by _____, who is _____ of the Commander of
Radford Army Ammunition Plant, on behalf of the United States Army.

Notary Public

My commission expires: _____

Alliant Ammunition and Powder Company, LLC voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002,

by _____, who is _____ of Alliant Ammunition
and Powder Company, LLC, on behalf of said organization.

Notary Public

My commission expires: _____

APPENDIX A

Not later than January 15, 2003, Respondents shall submit an application for modification of BOD₅ and TSS limits at Outfall 007 in the Permit. With this application, Respondents shall submit flow and production data relevant to modification of BOD₅ and TSS effluent limits for discharges from Outfall 007 for at least four consecutive months beginning in August or September 2002. Respondents shall respond to any Notice of Deficiency issued with respect to the Permit modification application within the time period specified in the Notice unless Respondents have both requested and received an extension. If an extension is granted, failure to respond by the end of the extension constitutes failure to respond to the Notice of Deficiency.

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